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311 Castle Hayne Drive
Cary, NC 27519

To: USPTO
Fax number: 5712738300

From: Igor V. Touzov (#34185)
Fax number:
Business phone:
Home phone:

Date & Time: 5/4/2006 2:32:27 PM
Pages: 2
Re: Application 10/710,574

Art Unit 2856
Charles D. Garber

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Igor Touzov (#34185)

Application 10/710,574

Petition to the Director

(37 CFR 1.181, MPEP § 706.07(c))

Last office action with respect to patent application 10/710,574 is ill-considered and causes premature cut off in prosecution of the application. Per MPEP § 706.07 arguments stated in last response and amendment were not considered nor addressed by Examiner.

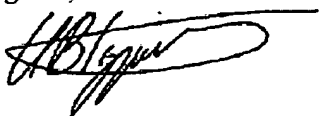
The fundamental difference between instant invention and prior art as disclosed by Sundaresan (US patent 6,399,939) and cited by Examiner resides in the fact that term "characteristics" is fundamentally distinct from term "events". Instant invention as clearly stated in claim 1 is founded on presence of "characteristics specific to the subject", while cited prior art clearly stated in claim 1 of US patent 6,399,939 is founded on ability "to detect a critical event". Examiner has not accounted for this principal and fundamental distinction of instant invention.

Examiner has ignored fundamental difference stated in last amendment with respect to prior art as disclosed by Bassim (US Patent 4,609,994). Fundamental difference of instant invention and this prior art exists in the fact that cited prior art is fundamentally based on registration "of acoustic emission" as clearly stated in claim 1 of US Patent 4,609,994, and inherently material fracture events as follows from well known definition of term "acoustic emission". Instant invention is, on contrary, based on monitoring of presence of "characteristics specific to the subject" as stated in claim 1 that also explicitly excludes dependency on acoustic emission.

Examiner explicitly ignore the fact that instant invention "does not use any actuators that might send energetic signals to probe said subject" as stated in claim 1. On contrary he examples prior art disclosed by Lewis, III (US Patent 6,386,038) and points to figure 2 of that patent wherein signal generator 41 supplies probing signal to object 13 through amplifier 42, and to its abstract that clearly states that cited apparatus "outputs induced signal" and "induces acoustic signal in the object". Examiner claims instant invention "as been anticipated by Lewis, III et al. (US Patent 6,386,038)". To do so he freely alters statements of US Patent 6,386,038. In action letter he said "damage discovered in passive mode" whereas careful examination of text of US Patent 6,386,038 states that inventor only claims that "possible damage in the passive mode". The fundamental advantage of instant invention from this prior art is its ability to statistically proof imminent or existing damage while in passive mode.

Based on above mentioned reasons I consider that Examiner does not have accurate knowledge of the text and statements of instant patent application, his actions does not follow MPEP § 706.07, and final rejection decision is premature. Therefore I request reconsideration and withdrawal of premature rejection.

Regards,



/Igor Touzov/